No. 455

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, APPELLANT

v.

ROMUALDO CORES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES

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CITATIONS

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OPINION BELOW

The District Court did not file an opinion in this case, but decided it on the authority of its opinion in *United States* v. *Tavares* (Appendix B, *infra,* pp. 38–40). A transcript of the proceedings in which the court orally dismissed the information is set forth in the record (R. 3).

JURISDICTION

On June 24, 1957, the District Court for the District of Connecticut orally dismissed the information (R. 3) on the authority of its opinion in *United States* v. *Tavares* (*infra,* pp. 38–40), in which it had ruled that "remaining" in the United States in violation of

8 U. S. C. 1282 (c) was not a continuing offense which could be prosecuted in any district where an alien crewman was found residing (*infra*, pp. 3–4). A notice of appeal to this Court was filed in the District Court on July 17, 1957 (R. 4), an amendment to the notice was filed on August 10, 1957 (R. 5), and this Court entered an order noting probable jurisdiction on November 12, 1957 (R. 6). 355 U. S. 866. The jurisdiction of this Court to review on direct appeal an order dismissing an information before trial, based on a construction of the statute on which the information is founded, is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether an alien crewman who willfully and knowingly remains in the United States in excess of the number of days allowed by a conditional permit, in violation of 8 U. S. C. 1282 (c), is guilty of a continuing offense which may be prosecuted in the district where such crewman is found illegally residing after expiration of the period fixed in the permit.

STATUTE AND REGULATIONS INVOLVED

Section 252 of the Immigration and Nationality Act of 1952, 66 Stat. 220 (8 U. S. C. 1282), and pertinent regulations of the Immigration and Naturalization Service, are set forth as Appendix A, *infra*, pp. 32–37.

STATEMENT

In a single-count information filed on May 7, 1957, in the United States District Court for the District of Connecticut, appellee, an alien crewman, was charged with willfully and knowingly remaining in the United States in excess of the number of days

allowed by his landing permit in violation of Section 252 (c) of the Immigration and Nationality Act of 1952 (8 U. S. C. 1282 (c), *infra*, p. 33). The information specifically charges in pertinent part that (R. 2):

> On or about May 26, 1955 at Bethel, Connecticut, within the jurisdiction of this court, ROMUALDO CORES, an alien crewman and the defendant herein, having entered the United States on April 27, 1955 at Philadelphia, Pennsylvania, on a conditional permit granted under Title 8, Section 1282 (a) (1) of the United States Code, did wilfully and knowingly remain in the United States, to wit: Bethel, Connecticut, in excess of the number of days allowed by such permit.
>
> In violation of Title 8, Section 1282 (c) of the United States Code.

On June 10, 1957, appellee pleaded guilty to the information, and the case was continued for sentence (R. 1).

On June 24, 1957, appellee was again brought before the court where the following colloquy occurred (R. 3):

> Mr. HULTGREN [Government Counsel]. I would like to draw the Court's attention that he stayed in New York for about a year before coming to Connecticut.
>
> The COURT. In that case, in view of the ruling on the Tavares case, I feel that he should be permitted to withdraw his plea.
>
> Mr. HULTGREN. I submit it as a matter of venue and he has to press that question before

any plea or trial. There is no question that this is a violation.

The COURT. Isn't there a question as to the jurisdiction of the Court in the District?

Mr. HULTGREN. As I understood the Court's opinion it was merely venue and not jurisdiction.

The COURT. It is jurisdiction.

Mr. HULTGREN. In that case, I think probably the accused should withdraw his plea and the Government will dismiss——

The COURT. The plea of Guilty may be withdrawn. The case may be dismissed for lack of jurisdiction.

A docket entry was entered that day ordering the plea of guilty withdrawn and dismissing the case "for lack of jurisdiction" (R. 1).

As is clear from the foregoing facts, the Government represented in effect that investigation showed that appellee had not reached Connecticut until a considerable time after the date alleged in the information and that he had gone from Philadelphia, where his ship landed, to New York, where he remained about a year before coming to Connecticut. On the basis of these facts, the court applied the interpretation of 8 U. S. C. 1282 (c) in its prior decision in *United States* v. *Tavares,* No. 9407 Crim. (unreported, May 6, 1957) (Appendix B, *infra,* pp. 38–40), and dismissed the information solely on the basis of lack of jurisdiction in the court.[1]

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[1] Since the instant crime is prosecuted by information, the allegation as to the date of the offense ("on or about May 26, 1955") could be amended to conform to the representation of

The gist of its holding in *Tavares* was that the crime of willfully remaining in the United States beyond the expiration of the number of days specified in the conditional permit is non-continuing in nature and is concluded at the instant the permit expired so that all the incidents of the crime, including venue, are fixed as of that time.[2] In this view, when this appellee entered Connecticut approximately a year after coming to the United States, he was not engaged in the criminal act of willfully remaining in the United States in excess of the number of days allowed in his conditional permit so as to fix venue in the District Court for the District of Connecticut.

SUMMARY OF ARGUMENT

The Court below has construed 8 U. S. C. 1282 (c) (Section 252 (c) of the Immigration and Nationality Act of 1952), punishing "[a]ny alien crewman who willfully remains in the United States in excess of the number of days allowed in any conditional permit * * *", as creating a crime which does not continue beyond the moment the conditional landing permit expires. In this view, when appellee came to Connecticut sometime after the expiration of the 29-day shore leave granted by the conditional landing permit, he was not then committing the offense of willfully remaining in the United States as pro-

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Government counsel should the Government prevail in its appeal and the case be remanded by this Court for further proceedings in the case. See Rule 7 (e), F. R. Crim. P.

[2] No appeal was taken in *Tavares* because a collateral issue was involved as to whether jeopardy had attached.

scribed by Section 1282 (c) so as to fix venue in the District Court for the District of Connecticut. The Government's position is, on the other hand, that the offense of willfully remaining in the United States beyond the expiration of the time limit in the crewman's landing permit is a continuing unlawful act within the meaning of 18 U. S. C. 3237, initiated by the original act of remaining in this country willfully after the permit has expired and continuing until the alien leaves the country or is apprehended, so that the alien may be prosecuted for such offense wherever he is living at the time prosecution is brought.

A

The District Court's reading of Section 1282 (c) as describing an offense which ceases at the moment the crewman's landing permit expires does violence to the language of the subsection. The very word "remain" imports the concept of continuing to be present after the initial happening of an event, *i. e.*, "to continue unchanged in place, form, or condition * * *; to abide; endure; last; continue" (*Webster's New International Dictionary* (2d ed. unabridged)).

With respect to Section 1282 (c), this use of the term "remains" is in accord with its settled meaning prior to the 1952 Act. A regulation of the Immigration and Naturalization Service in force immediately prior to 1952 provided that an alien temporarily admitted as a bona fide seaman would be deemed "to have remained" for a longer time than permitted if (8 C. F. R. (1949 ed.) 120.37) "He is found in the United States after the expiration of the time for

which he was temporarily admitted * * *." The term was given a like meaning in the Immigration Act of May 26, 1924 (43 Stat. 162). Thus, both in its ordinary meaning and in prior legislative usage, "remain" had the connotation of a continuing offense.

The statute does not prescribe any particular moment when the offense ends but applies when the crewman remains "in excess of the number of days allowed in any conditional permit." The term "excess" covers anything beyond a fixed date and also imports the idea of continuity. Furthermore, since the alien crewman is not in violation of the statute until he begins *"willfully"* to remain in the United States, the District Court's construction would have the anomalous effect of completely immunizing from the statute any crewman whose "willfulness" commenced subsequent to the time that his permit expired. The crime, moreover, does not relate to remaining in any particular locale but "in the United States."

Since the commission of the crime is not conditioned on the circumstances of any one day or the happening of a fixed event, it follows that it may be committed anywhere the crewman is willfully remaining in the United States beyond the expiration of his permit, without necessary reference either to the departure time of his vessel or the termination of the 29-day period. In this case, the information permitted proof that appellee was "willfully remaining" in the United States beyond the allowable period when he went to Connecticut, notwithstanding the fact that he was not residing there at the instant his permit expired.

B

Since the crime of "willfully remaining" in the United States is not a crime consisting of a single act committed at a single instant, the situs of the crime is wherever the alien is illegally residing in this country. When he changes his illegal residence from district to district, his crime is one "committed in more than one district" which may be prosecuted in any such district within the meaning of 18 U. S. C. 3237. Where a statute punishes the willful commission of an affirmative act (here, illegally remaining in the United States), the offense is committed wherever the act constituting the evil which Congress intended to proscribe is committed.

This crime, directed as it is against the affirmative act of "willfully remaining" (rather than, for instance, the negative offense of failing to return to his ship), could not be said to have been committed at the port if the alien is not physically in that district at the expiration of his permit or thereafter. And clearly Congress could not have intended to limit the offense to the place where the alien happened to be, or was passing through, the moment his permit expired. Due to the peculiar nature of the problem of alien seamen, Congress certainly could not have intended to place on the Government the burden of ascertaining that particular place, perhaps months or years later when a deserting seaman is found willfully residing in this country. The arbitrary fixing of venue in such a place would, furthermore, frequently create a hardship on an alien if he were returned to such a place where neither he nor his

witnesses were residing. See *Johnston* v. *United States*, 351 U. S. 215, 224 (dissenting opinion of Mr. Justice Douglas, concurred in by the Chief Justice and Mr. Justice Black). The construction of the crime as a continuing offense would, on the other hand, afford the accused the remedy of removal, as provided in Rule 21 (b), F. R. Crim. P. The offense is comparable to other continuing crimes. *E. g., In re Snow*, 120 U. S. 274, 281 (cohabitation).

C

The legislative history of Section 1282 (c) demonstrates that the evil which Congress was intending to reach was the problem of deserting seamen who were violating the conditions of their temporary admission in order to remain in this country illegally. Such deserters illegally present in the United States were found to number in the thousands. This problem was not created by those who for one reason or another remain beyond the expiration of their shore leave for a few hours or even days, but by those who "remain here illegally beyond the time granted them to stay, and become lost in the general populace of the country" and by the fact that the Immigration Service found it difficult to search out such deserters. S. Rep. 1515, 81st Cong., 2d Sess., pp. 550, 555-556. The very statement of the problem shows that Congress intended that Section 1282 (c) apply to deserters wherever they could be found illegally residing.

It would be a rare case that a crewman would be apprehended at the instant his permit expired, and in most instances it would be extremely difficult to determine precisely where a deserter found to be remaining here illegally had been when his permit expired. The problem demanded a criminal sanction which would apply without such a crippling limitation. It is apparent that the term "remain", within the context of Section 1282 (c), derives its meaning from the deportation features of the Act, and that both remedies are intended to be available at any time against deserting seamen who become "lost in the general population" beyond the temporary period during which they are given permission to stay in this country. Both sanctions are designed to reach the deserting seaman wherever he happens to be.

D

The court below reasoned that, since the "entry" of aliens had never been regarded as a continuing crime, neither should the crime of "remaining". The court further reasoned that Congress did not intend "remaining" under Section 1282 (c) to be a continuing offense because 8 U. S. C. 1329 (relating to the jurisdiction of the district courts "of all causes, civil and criminal," arising under Title II of the Immigration and Nationality Act of 1952) failed to mention Section 1282 (c) although it specifically made crimes under Sections 1325 (false entry of aliens) and 1326 (reentry of deported aliens) punishable where the aliens were apprehended. This reasoning is not persuasive because "entry" crimes, unlike the offense of "remain-

ing", do not have duration or import continuity. Congress thus had good reason to provide a special venue clause couched in specific terms to extend the scope of permissible venue as to such "entry" crimes. On the other hand, the crime of "remaining", which by definition imports the idea of a continuing crime, would not need such a special venue clause since it is a crime which may be prosecuted "at any place in the United States at which the violation may occur" within the meaning of Section 1329. In addition, the offense falls within the category of crimes which can be "committed in more than one district" (18 U. S. C. 3237).

The legislative history of Section 1329, furthermore, shows that it was framed to avoid the then current and unresolved problem of whether "entry" crimes were continuing offenses. The fact that the venue of "entry" crimes was thus extended to the place of apprehension gives weight to our position here. A Congress which deemed it desirable to prosecute illegal entrants where found, although entry occurs at a particular place and time, must have thought that those illegally remaining were prosecutable where found residing, since "remaining" necessarily occurs where the alien is. Every relevant indication of Congressional purpose indicates that Section 1282 (c) was designed to establish a continuing offense.

ARGUMENT

THE VENUE FOR A PROSECUTION OF AN ALIEN CREWMAN UNDER 8 U. S. C. 1282 (C), FOR THE MISDEMEANOR OF WILLFULLY REMAINING IN THE UNITED STATES IN EXCESS OF THE NUMBER OF DAYS ALLOWED IN HIS CONDITIONAL LANDING PERMIT, LIES IN ANY JUDICIAL DISTRICT WHERE HE IS FOUND RESIDING AFTER EXPIRATION OF THE PERMIT

In 8 U. S. C. 1282 (c) (Section 252 (c) of the Immigration and Nationality Act of 1952), Congress undertook to punish "[a]ny alien crewman who *willfully remains* in the United States in excess of the number of days allowed in any conditional permit * * *." (Emphasis added.) 8 U. S. C. 1329 (Section 279 of the 1952 Act) provides that prosecution for this offense "may be instituted at any place in the United States at which the violation may occur * * *". The court below held, in effect, that the crime can not "occur" beyond the moment the conditional permit expires—*i. e.*, the moment that the ship on which he arrived sails without him, but not exceeding the end of the 29th day (see *infra*, p. 39).[3]

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[3] The period of time for which landing permits may be issued to alien "crewmen" is left to the discretion of immigration officers but may not *exceed* (8 U. S. C. 1282 (a)):

> (1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or
>
> (2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

The landing permit (Form I–95A) is stamped so as to indicate whether it is issued under subsection (1) or (2). If issued under subsection (1), it may be changed on application of the

The holding below, however, does not specify whether the *locus delicti* (and hence the venue) is in the place where the alien is physically present when his conditional permit expires (presumably New York in this case), or where his ship sails without him (presumably Philadelphia). That problem was not discussed here or in the *Tavares* decision which was adopted by reference.[4] The holding is only that, when appellee came to Connecticut sometime after the expiration of the 29-day shore leave granted by the conditional landing permit, he was not then committing the offense of willfully remaining in the United States as proscribed by Section 1282 (c) so as to fix venue in the District Court for the District of Connecticut.

It is the Government's position that the offense of willfully remaining in the United States beyond the expiration of the time-limit in the crewman's landing permit is a continuing unlawful act within the meaning of 18 U. S. C. 3237 ("Offenses begun in one district and completed in another"). It is initiated by the original act of remaining in this country willfully

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alien and an extension of time may be granted him to enable him to depart on another vessel or aircraft pursuant to subsection (2) within a maximum 29-day period from *his arrival in the United States*. 8 C. F. R. 252.4, 252.41; see *Savelis* v. *Vlachos*, 137 F. Supp. 389, 395–396 (E. D. Va.).

The maximum 29-day period was apparently provided to avoid a conflict with the Alien Registration Act applying to an alien who (8 U. S. C. 1302) "remains in the United States for thirty days or longer * * *". See Reitzel, *Alien Seamen and Airmen Under the Immigration Laws of the United States*, 19 Geo. Wash. L. Rev. 367, 375–376.

[4] In the *Tavares* case, the defendant was apparently present in Newport News, Virginia, when his ship sailed without him on July 23, 1955. He came to the District of Connecticut 32 days "after entry" (*infra*, p. 38).

after the permit has expired and continues until the alien leaves the country or is apprehended,[5] so that the alien may be prosecuted for such offense wherever he is living at the time prosecution is brought.

The accused in a criminal case has the constitutional right to a jury trial "in the State" and "district wherein the crime shall have been committed". U. S. Const., Art. III, § 2, Amend. VI. Where a particular criminal act is "committed" for this purpose depends principally on the nature of the act proscribed and the evil against which the act is aimed. *Johnston* v. *United States*, 351 U. S. 215, 220; *United States* v. *Anderson*, 328 U. S. 699, 703; *United States* v. *Bowman*, 260 U. S. 94. By these tests, an alien "remains" in the United States wherever the alien, by his own choice, happens to be at any time after his permit has expired.

A. THE LANGUAGE OF SECTION 1282 (C) DESCRIBES A CONTINUING OFFENSE

1. The decision below, construing Section 1282 (c) as establishing an offense which is concluded the instant the alien crewman's landing permit expires, does violence to the language of the subsection. The very word "remains" imports the idea of continuity of action. The act proscribed is continuing to be physically present in the United States beyond the allowed period of shore leave. "Remain" is defined (*Webster's New International Dictionary* (2d ed., unabridged), p. 2106) as "to continue unchanged in place,

[5] Presumably the offense would also terminate if, for some reason, the condition of "willfulness" terminated (see *infra*, pp. 17–18).

form, or condition * * *; to abide; endure; last; continue." In the ordinary meaning of the word, the alien crewman "remains" in the United States in violation of law as long as he is here after the expiration of his permit.[6]

In this context, the use of the term "remains" in the sense of continuing one's illegal presence in the United States was a common one before enactment of the 1952 Act. The regulations of the Immigration and Naturalization Service then in force were to that effect.[7] And the Immigration Act of May 26, 1924, Sec. 14 (43 Stat. 162), which rendered deportable any alien "who at any time after entering * * * is found * * * to have remained therein for a longer time than per-

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[6] See 76 C. J. S., p. 901:

REMAIN. The word "remain" is defined as meaning to continue; to continue unchanged; to continue unchanged in place; to abide; to endure; to last; to stay; to stay behind after others have withdrawn; to be left; to be left after another or others are gone; to tarry. The term implies the absence of motion, and presupposes and implies something which exists or continues after some other time or event.

"Remain" has been held to be synonymous with, or equivalent to, "be", see 10 C. J. S., p. 215, note 98, and "reside".

The word "remaining" involves the idea of continuance in the same state or position [cited cases omitted].

[7] The regulations provided that aliens temporarily admitted as bona fide seamen (8 C. F. R. (1949 ed.) 120.37):

* * * shall be deemed to have remained in the United States for a longer time than permitted by the terms of his admission or to have failed to maintain the status under which he was admitted if:

(1) *He is found in the United States after the expiration of the time* for which he was temporarily admitted or the expiration of any authorized extension of such period * * *. [Emphasis added.]

mitted under this Act or regulations made thereunder * * *," was clearly understood to render such aliens (including crewmen) deportable at any time after they had begun to "remain" in the country illegally. Cf. *Philippides* v. *Day*, 283 U. S. 48; *United States* v. *Prince Line*, 189 F. 2d 386, 389–390 (C. A. 2); see Reitzel, *Alien Seamen and Airmen under the Immigration Laws of the United States*, 19 Geo. Wash. L. Rev. 367, 389–390.[8] Thus, both in its ordinary meaning and prior legislative usage, "remains" has the connotation of a continuing offense.

2. Moreover, the statute does not prescribe any particular moment when the offense ends. It applies to alien crewmen who remain "in excess of the number of days allowed in any conditional permit * * *." This language certainly contains no suggestion that the crime does not continue beyond the moment when the time specified in the permit expires (or when the vessel leaves port). The number of days in the permit fixes only the commencement of the crime, not its termination. "Excess" is a generic term covering

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[8] Even prior to the 1924 Act, the Chinese Exclusion Law imposed both the remedy of deportation and imprisonment at hard labor on certain Chinese "who remain in" the United States. *Wong Wing* v. *United States*, 163 U. S. 228. While this Court in *Wong Wing* held that the absence of provisions for a judicial trial to establish guilt rendered the criminal features of the legislation unenforceable, it observed (163 U. S. at p. 235): "So, too, we think it would be plainly competent for Congress to declare the act of an alien in remaining unlawfully within the United States to be an offence, punishable by fine or imprisonment, if such offence were to be established by a judicial trial."

anything above the fixed time, and therefore also connotes the element of continuity.

This becomes the more clear in the light of the fact that the crime is "*willfully*" remaining in the United States beyond the permitted time. An alien who, through illness or other unavoidable circumstance, failed to return to his ship when it sailed would not have "willfully" violated the statute.[9] On the other

[9] The requirement of "wilfulness" was apparently written into Section 1282 (c) to restrict its application to situations where the crewman knowingly and voluntarily is overstaying his leave. The first bill introduced by Senator McCarran on April 20, 1950, S. 3455, 81st Cong., failed to include the term "willful." S. 3455 was submitted to experts of the Immigration and Naturalization Service for comment (see Joint Hearings before the Subcommittees of the Committees on the Judiciary, 82d Cong., 1st Sess., on S. 716, H. R. 2379, and H. R. 2816, p. 3). The following discussion appears at pp. 252–3 to 252–4 of the Analysis of S. 3455, 81st Cong., prepared by the General Counsel, Immigration and Naturalization Service:

> Subsection (c), which provides a criminal penalty for remaining in this country for a longer time than that specified in the permit to land, is exceedingly rigid. The subsection does not provide that the crewman must have "wilfully" remained here for a longer time than permitted, nor is any allowance made for the circumstances which may have prevented him from leaving. While the Service is not opposed to a provision for criminal penalty in appropriate cases where crewmen overstay their time in the United States, it is believed that subsection (c) is too harsh and should be modified at least to the extent that it will authorize the court to impose a fine in lieu of imprisonment, or to suspend sentence in cases in which the court is convinced that the crewman was unable to leave the United States within the prescribed period of time by circumstances over which the crewman had no control. It might also be provided that upon the recommendation of this Service the court likewise would be authorized to suspend sentence, since it is apparent that under certain circumstances, particularly during time of war, it might

hand, if at some later time when he was able to depart, he undertook to remain in this country illegally, he would then "willfully remain" in the ordinary sense of those words, and this irrespective of the sailing date of his original vessel. The construction of the statute by the court below, however, would lead to the anomalous result that a crewman whose "wilfulness" commenced somewhat later than the time the permit expired would be completely immunized from prosecution. No such intention, we believe, may be fairly imputed to Congress.

3. The offense charged, it should also be emphasized, relates not to remaining in any particular locale but to remaining "in the United States". The prohibited conduct is not concluded so long as the alien "willfully remains in the United States", *i. e.*, until he departs the country on the vessel which brought him or another, or until he is apprehended, or until his remaining is no longer "willful" in some other respect. This language shows that the *locus delicti* has no necessary relation to any specific place such as the port of debarkation or the place where the alien happens to be present at the time the permit expires.

In sum, in the use of the word "remain" and in the failure to use language suggesting either a terminal date or a fixed locale, the statute makes it evident that the offense occurs wherever the alien deliberately

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be advantageous to the Government to allow crewmen to remain in this country for a longer period than that for which they were originally admitted.

It was apparently in response to these comments that "willful" was written into the statute.

resides. In this case, the information permitted proof that appellee was willfully remaining in the United States beyond the specified period when he went to Connecticut, regardless of the fact that he was not residing there at the instant his permit expired. Venue was therefore properly laid in Connecticut.

B. THE CONDUCT PROHIBITED BY SECTION 1282 (C) HAS ALL THE ATTRIBUTES OF A CONTINUING OFFENSE

By its very nature, the crime of willfully remaining in the United States in excess of the number of days permitted is not a crime which is committed and wholly concluded in a single instant. The evil from which Congress sought protection is the continuing illegal presence of alien crewmen who are secreting themselves in the United States without permission (see *infra*, pp. 23–25). This evil extends to wherever the alien is illegally residing in this country. If in defiance of our laws he moves from district to district, his offense is, in every sense, a crime "committed in more than one district." It may therefore be prosecuted in any district in which such offense was "* * * continued * * *" within the meaning of 18 U. S. C. 3237 (*infra*, p. 33). Under this statute, trial in the District of Connecticut was proper in this case. *United States* v. *Johnson*, 323 U. S. 273, 274–275; *United States* v. *Midstate Co.*, 306 U. S. 161, 166; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 76–77.[10]

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[10] The Reviser's notes to 18 U. S. C. 3237 (see Note following 18 U. S. C. 3237) make it clear that the phrase "committed in more than one district" was added to remove all doubt as

Where the crime is the *failure* to do a legally required act, the place fixed for its performance fixes the situs of the crime. *Johnston* v. *United States, supra,* 351 U. S. at p. 220. But where, as in the instant case, the statute punishes the willful commission of an affirmative act (here, illegally remaining in the United States), the offense is committed wherever the conduct which Congress intended to proscribe is committed. See *United States* v. *Floyd,* 228 F. 2d 913, 918–919 (C. A. 7), certiorari denied, 351 U. S. 938; and see Beale, *The Conflict of Laws,* Vol. II (1935), p. 1287.

Logically, the proscribed conduct—"remaining"—cannot be regarded as occurring in a single instant at a particular place. Since the punishment is directed against the affirmative act of willfully remaining (rather than, for instance, the negative offense of failing to return to his ship), the alien would not be said to have committed the offense at the port if in fact he was not physically present in that judicial district at the expiration of his permit. And clearly Congress could not have intended to limit the offense to the place where the alien happened to be, or was passing through, when his permit expired. The ascertainment of that place, perhaps months or years

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to the venue of continuing offenses and to meet the situation created by this Court's decision in *United States* v. *Johnson, supra* (which turned on the absence of a special venue provision in the Dentures Act there involved) by making special provisions unnecessary except in cases where Congress desires to restrict the prosecution of offenses to particular districts. See also Orfield, *Venue of Federal Criminal Cases,* 17 Univ. of Pittsburgh L. Rev. 375, 398–399.

later when a deserting crewman is found illegally remaining in this country, would be a difficult burden to place on the Government, particularly in respect to transient seamen who have no roots in this country and whose every effort is to conceal their whereabouts.[11]

The fixing of venue at the place where an alien seaman happens to be (perhaps in passage to another place) at the expiration of his permit would also create a situation of hardship on the alien crewman in many instances, since both he and his witnesses would frequently be forced to be transported to a distant place where he was not residing and where he and his witnesses were complete strangers. See *United States* v. *Johnson,* 323 U. S. 273, 275; *Johnston* v. *United States,* 351 U. S. 215, 224 (dissenting opinion of Mr. Justice Douglas, concurred in by the Chief Justice and Mr. Justice Black); and see Comment, 55 Mich. L. Rev. 597, 598–599. The construction of the statute as establishing a continuing offense would eliminate this result since the crewman, if prosecuted away from his home, could move to have his case transferred there if in the interests of justice. Rule 21 (b), F. R. Crim. P.

This construction is also supported by judicial decisions involving analogous statutes. In *In re Snow,* 120 U. S. 274, 281, this Court held that cohabitation "is, inherently, a continuous offence, having duration; and not an offence consisting of an isolated act." Remaining, like cohabitation, has duration as long as it continues uninterrupted. The mere fact that an

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[11] See *Developments in the Law—Immigration and Nationality,* 66 Harv. L. Rev. 643, 676–678.

offense can be made out at the inception of the act (see the *Tavares* opinion, *infra*, p. 39) does not preclude the act from continuing beyond its inception.

Other comparable examples of continuing offenses include cases involving the failure to register under the various universal military training statutes. These statutes did not themselves make the failure to register a continuing offense, but regulations adopted pursuant to the statutes, while fixing the time and place for registration, made registration a continuing obligation if one failed to register at the time appointed. The courts have held that, since the duty to register was a continuing obligation, failure to register was a continuing offense. *McGregor* v. *United States,* 206 F. 2d 583 (C. A. 4); *Fogel* v. *United States,* 162 F. 2d 54 (C. A. 5), certiorari denied, 332 U. S. 791.

Similarly, the failure of an alien to register under a statute which required him to register if he remained in the United States for thirty days or longer has been held to be a continuing wilful violation of the law. *United States* v. *Franklin,* 188 F. 2d 182, 187 (C. A. 7). Even in the absence of the explicit term "remains", it could hardly be contended under the instant statute that an alien crewman's obligation to leave the country ends on the date his permit expires. His duty to leave continues as long as he remains here. Therefore, under the rationale of the cases cited, remaining here is a continuing offense, the duty to leave being comparable to the duty to register. An alien "remains" wherever he is.

C. THE LEGISLATIVE HISTORY OF SECTION 1282 (C) SHOWS A CONGRESSIONAL PURPOSE THAT IT APPLY TO THE PROSECUTION OF DESERTING SEAMEN WHEREVER FOUND RESIDING ILLEGALLY

The special concern of Congress in strengthening and expanding the alien crewman control provisions of the basic immigration laws, and in providing for a criminal sanction to be applied against the crewman himself who overstays his shore leave, was to meet the problem of deserting seamen who were violating the conditions of their temporary admission in order to remain in this country illegally.

In its comprehensive study of the immigration laws (see *The Immigration and Naturalization Systems of the United States,* S. Rep. 1515, 81st Cong., 2d Sess., April 20, 1950), the Senate Judiciary Committee found that in the fiscal year 1947 there were 4,126 alien seamen who had deserted their ships in this country, and 4,353 in the fiscal year 1948 (*id.,* p. 549).[12] The problem was explained by the Senate Committee as follows (*id.,* p. 550):

> The problems relating to seamen are largely created by those who desert their ships, *remain here illegally beyond the time granted them to stay, and become lost in the general populace of the country.* For a number of years, it has been generally recognized, both by Government officials and others, that the temporary "shore leave" admission of alien seamen who remain illegally constitutes one of the most important loopholes in our whole system of restriction and

[12] Every year nearly a million alien seamen and thousands of alien airmen arrive at the ports of the United States from abroad. Reitzel, *supra* note 16, 19 Geo. Wash. L. Rev. 367.

control of the entry of aliens into the United States. The efforts to apprehend these alien seamen for deportation are encumbered by many technicalities invoked in behalf of the alien seamen and create conditions incident to enforcement of the laws which have troubled the authorities for many years.

Another complicating factor is the fact that, under certain limitations, an alien seaman who intends to reship on another vessel bound to a foreign port may be paid off, discharged, and permitted to remove his effects from the vessel on which he arrives in a port of the United States.

The testimony of witnesses at the hearings before the subcommittee and the comment received from field offices of the Immigration and Naturalization Service emphasized the magnitude of the problem presented by the admission of alien seamen for temporary periods and the difficulty of arriving at any totally effective solution in view of the privileges which have traditionally been accorded to those who follow the calling of the sea. Many of the problems arise from the conflict between the immigration laws which are designed to control the entry of aliens and certain of the navigation laws designed to promote and protect the welfare of the seaman.

Opinion generally was that the necessity of affording temporary access to our shores to alien seamen inevitably results in continuing opportunities for aliens to remain illegally. The problem increases as the employment situation in the maritime service deteriorates and more alien seamen are left in our ports to be

> deported at Government expense. The situation is further aggravated by the fact that many alien seamen do not have the necessary documents to permit deportation. [Emphasis added.]

The problem in relation to seamen was not created by those who for one reason or another remain beyond the expiration of their shore leave for a few hours or even days, but by those who "remain here illegally beyond the time granted them to stay, and become lost in the general populace of the country." This was the group to which the criminal sanction was extended as a supplement to the remedy of deportation.[13]

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[13] The committee's study (*id.*, pp. 555–556) also stressed the difficulty of searching out such deserters:

> The subcommittee received many suggestions to impose additional controls on alien seamen and to facilitate the deportation of those found to be in this country illegally. It was suggested that the fingerprinting and registration provisions be made more stringent, and that more accurate reports be made of seamen granted shore leave in cases where they expressed an intention to reship on a different vessel; that, in the case where a seaman departs from a port other than that at which he entered, the port of entry should be notified immediately; that a summary type of deportation be provided where the seaman is arrested within 3 years after entry; that a more strict rule be enforced regarding the registration of change of address by alien seamen; and that where voluntary departure is granted an alien seaman it be limited to a one-way trip to a foreign port.
>
> Commenting on the present efforts of the Immigration and Naturalization Service to apprehend alien seamen illegally in the country, an immigration officer stated that, when adequate personnel is available to give priority to that type of work, the immigration officers check the places where the seamen are known to congregate, such as seamen's clubs. A representative of the central office of the

The very statement of the problem indicates that Congress must have contemplated that Section 1282 (c) apply to deserters wherever they could be found illegally residing. The evil which Congress found to exist was that seamen were leaving their calling and were hiding out in large city areas. It would be a rare case that a crewman would be apprehended at the instant his permit expires. And, in most cases, it would be extremely difficult to determine where a deserter found to be remaining here illegally had been at the time his permit expired. Effective enforcement of the alien crewman control program would demand, in the light of the problem presented, a criminal sanction enforceable at any time and place where such persons were found illegally residing, without reference to where they happened to be when their ship left port or when their permit otherwise expired.[14]

It is likewise apparent that the term "remain" within the context of Section 1282 (c) derives mean-

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Immigration and Naturalization Service stated that with their present staff they are unable, however, to continue such intensive searches for deserting seamen as they did during the war period. It was stated that during the late war the Immigration and Naturalization Service and the Maritime Commission established an alien-seaman program to cope with the problems of wholesale desertions by merchant sailors in the Allied merchant marine. One of the objects of the program was to locate deserting seamen in order to keep a greatly supplemented marine moving and to prevent omission of ships from convoys.

[14] In accord with this construction, both committee reports on the bills which become the present law describe the offense set forth in Section 1282 (c) as "overstaying a period of temporary admission" (H. Rep. 1365, 82d Cong., 2d Sess., p. 66; S. Rep. 1137, 82d Cong., 2d Sess., p. 36).

ing from the deportation features of the act. Both remedies are intended to be available at any time against deserting seamen who become "lost in the general population" beyond the temporary period during which they are given permission to stay in this country. Both are designed to reach the deserting seaman wherever he happens to be.

D. THE FACT THAT CONGRESS MADE "ENTRY" CRIMES PROSECUTABLE WHERE THE ALIEN WAS FOUND DOES NOT INDICATE ANY CONTRARY INTENTION AS TO THE CRIME OF "REMAINING"

Despite the difference between the meaning of the word "entry" and the word "remains," the court below reasoned that, since the illegal "entry" of aliens had never been regarded as a continuing crime, neither should the crime of "remaining."[15] In similar vein, the court reasoned that Congress did not intend "remaining" under Section 1282 (c) to be a continuing offense because 8 U. S. C. 1329[16] failed to mention Section 1282 (c), although it specifically made crimes under Sections 1325 (false entry of aliens) and 1326 (reentry of deported aliens) punishable where the alien was apprehended.

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[15] *United States* v. *Tavares*, App. B., *infra*, p. 39.

[16] This section (Section 279 of the Immigration and Nationality Act of 1952) provides, as it appears in the United States Code: "The district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this subchapter. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under sections 1325 or 1326 of this title may be apprehended. * * *" (Act of June 27, 1952, c. 477, Title II, ch. 8, § 279, 66 Stat. 230).

This reasoning is not persuasive since the finality of an "entry" is plain once the act of "entry" has been accomplished. It therefore would take some special clause to make an "entry" offense continuing.[17] Not so with the crime of "remaining," which in itself contains the element of continuation. Finality does not attach to the act of remaining until one no longer "remains". Congress had good cause to specify in 8 U. S. C. 1329, *supra*, that "entry" crimes should be deemed to extend so as to be punishable at the place of apprehension, whereas it would have been redundant to insert a like clause in regard to the crime of "remaining" because, as an inherently continuing act, it would normally "occur" where the alien was apprehended. With respect to offenses of this nature, 8 U. S. C. 1329 provides that prosecutions "may be instituted at any place in the United States at which the violation may occur. * * *."

In addition, as already noted, the revisers (see *supra*, pp. 19–20, fn. 10), in extending the scope of 18 U. S. C. 3237 (*infra*, p. 33) to make crimes "committed in more than one district" triable in any such district, did so to avoid the necessity of special venue provisions as to such crimes and to eliminate the negative implications that the absence of such a provision might have. 18 U. S. C. 3237 would, in short, ordinarily be adequate to fix the venue of any crime which was "committed in more than one district." "Entry" crimes, however, would not on their face fall within that

[17] See *United States* v. *Vasilatos*, 209 F. 2d 195 (C. A. 3); *Lazarescu* v. *United States*, 199 F. 2d 898 (C. A. 4). But see *United States* v. *Alvarado-Soto*, 120 F. Supp. 848, 850 (S. D. Cal.), holding that the violation of that part of 8 U. S. C. 1326 making it a crime to be "found in the United States" after having been deported was a continuing offense.

section. The following excerpt from the Analysis of S. 3455, 81st Cong., prepared by the General Counsel of the Immigration and Naturalization Service, indicates the reason for this special provision regarding the crimes of illegal entry in 8 U. S. C. 1329 (p. 276–2):

> The Service also wishes to urge that section 276 be broadened so as specifically to make it a criminal offense for a person to be found in the United States after his arrest and deportation or after his exclusion and deportation, unless consent for his reapplying has been granted and he has been legally admitted. This recommendation is based upon the fact that litigation now pending indicates the possibility that this section 1 of the 1929 Act may be inadequate to permit prosecution of a deported alien who is found in the United States after deportation and in whose case it is not possible to establish the place of his entry. In the pending case it is possible to show that the alien has been deported, that he has not been granted permission to reapply, and that he is at present in the United States. However, it is not possible to establish the place of his entry. An attempt is being made to defeat his prosecution under section 1 of the Act of March 4, 1929 on the ground that the proper venue for the suit cannot be established. The Government will attempt, among other things, to urge that a violation of section 1 of the 1929 Act is a continuing offense within the meaning of 18 U. S. C. 3237, but it cannot be known at this time, of course, whether we will be successful in so urging. It would appear that if this section is broadened so as

specifically to make it an offense for the alien to be found in the United States, the possible loophole in the present statute will be overcome.

Indeed, the fact that "entry" crimes were made punishable at the place of apprehension by 8 U. S. C. 1329, *supra,* is itself an indication of the broad Congressional purpose to punish the unlawful presence of aliens in this country in the district where the alien is found.[18] The crime of willfully remaining in the United States is more typically a continuing crime than illegally reentering the country. A Congress which deemed it desirable to prosecute illegal entrants where found, although entry occurs at a particular place, must have thought that those illegally remaining were prosecutable where found, since remaining necessarily occurs where the alien is.

We submit that every relevant indication of Congressional intent indicates that Congress meant Section 1282 (c) to describe a continuing offense, and that venue should therefore lie wherever that offense continues to be committed, *i. e.,* wherever the alien is found.

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[18] See, as to a violation of 8 U. S. C. 1326 by being found after exclusion and deportation, *United States* v. *Alvarado-Soto*, 120 F. Supp. 848, 850 (S. D. Cal.).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed.

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FEBRUARY 1958.

APPENDIX A

1. Section 252 of the Immigration and Nationality Act of 1952, 66 Stat. 220 (8 U. S. C. 1282), provides (as it appears in the United States Code):

PERIOD OF TIME

(a) No alien crewman shall be permitted to land temporarily in the United States except as provided in this section and sections 1182 (d) (3), (5) and 1283 of this title. If an immigration officer finds upon examination that an alien crewman is a nonimmigrant under paragraph (15) (D) of section 1101 (a) of this title and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b) of this section, and for a period of time, in any event, not to exceed—

(1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or

(2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

REVOCATION; EXPENSES OF DETENTION

(b) Pursuant to regulations prescribed by the Attorney General, any immigration officer

may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a) (1) of this section, take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States as the expense of the transportation line which brought him to the United States. Until such alien is so deported, any expenses of his detention shall be borne by such transportation company. Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection.

PENALTIES

(c) Any alien crewman who willfully remains in the United States in excess of the number of days allowed in any conditional permit issued under subsection (a) of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or shall be imprisoned for not more than six months, or both.

2. Section 279 of the Immigration and Nationality Act of 1952, 66 Stat. 230 (8 U. S. C. 1329), provides (as it appears in the United States Code):

The district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this subchapter. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United

States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under sections 1325 or 1326 of this title may be apprehended. No suit or proceeding for a violation of any of the provisions of this subchapter shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reasons therefor.

18 U. S. C. 3237 provides in part:

Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

* * * * *

4. Regulations of the Immigration and Naturalization Service provide in pertinent part:

8 C. F. R. 252.1:

Conditional permit to land—(a) *Conditions.* An immigration officer in his discretion may grant an alien crewman a conditional permit to land temporarily in the United States whenever such officer determines in accordance with section 252 of the Immigration and Nationality Act and this part that the crewman is eligible for such a permit. Such a permit shall be granted subject to the following conditions:

(1) The crewman agrees that while in the United States he will not pursue any employment or engage in any activity inconsistent with his temporary landing as a crewman or not related to the purpose for which he was permitted to land: and

(2) The crewman agrees to leave the United States within the period for which he was permitted to land; and

(3) If admitted under section 252 (a) (1) of the Immigration and Nationality Act, the crewman agrees to leave the United States and each port of the United States at which permitted to land on board the vessel or aircraft which brought him to the United States.

(b) *Period of time allowed.* The period of time for which an immigration officer may permit the temporary landing of a crewman who is qualified therefor under the provisions of paragraph (a) of this section is the applicable period provided in section 252 (a) (1) or in section 252 (a) (2) of the Immigration and Nationality Act.

(c) *Landing under section 252 of the Immigration and Nationality Act.* The immigration officer authorizing an alien crewman's landing under section 252 of the Immigration and Nationality Act shall note the crewman's set of immigration Forms I–95 to show the date and

port of landing, the name or identification marks of the vessel or aircraft on which the crewman arrived and whether landing was authorized under clause (a) (1) or clause (a) (2) of section 252 of that Act. The Form I–95A shall be placed in the crewman's passport and shall constitute his conditional permit to land. Any Foreign Service Form 257a presented by the alien crewman and which bears a valid nonimmigrant visa issued to the alien as a crewman pursuant to section 101 (a) (15) (D) of the Immigration and Nationality Act shall be appropriately noted and returned to the crewman for presentation on subsequent arrivals in the United States.

8 C. F. R. 252.3:

Arrest and deportation of crewmen not within the purview of § 252.2—(a) Violation of status; determination of deportability. The question of the deportability of an alien crewman not within the purview of § 252.2 who is believed to be subject to deportation shall be determined in accordance with the procedure set forth in section 242 of the Immigration and Nationality Act and Part 242 of this chapter. Such an alien crewman shall, within the meaning of section 241 (a) (9) of the Immigration and Nationality Act, be deemed to have failed to maintain his nonimmigrant status under sections 101 (a) (15) (D) and 252 of the Immigration and Nationality Act and under this part if:

(1) It is determined that he is not a bona fide crewman; or

(2) He does not intend to depart on a vessel or aircraft within the period for which he was permitted to land.

(b) *When not considered bona fide.* For the purposes of this section, an alien crewman shall be considered not to be a bona fide crewman

under any of the circumstances listed and described in § 252.2 (b).

(c) *When deemed not to intend to depart.* For the purposes of this section, an alien crewman shall be deemed not to intend to depart on a vessel or aircraft within the period for which he was permitted to land temporarily if:

(1) He evidences orally, by writing, or by conduct an intention not to depart on a vessel or aircraft within the period of time for which he was permitted to land temporarily; or

(2) By reason of his own conduct it is or will be impossible for him to depart on a vessel or aircraft within the period for which he was permitted to land; or

(3) He remains in the United States after the expiration of the time for which he was permitted to land.

* * * * *

8 C. F. R. 252.4:

Request for change of period of landing. An alien crewman permitted to land for the period set forth in section 252 (a) (1) of the Immigration and Nationality Act who is maintaining his status but who desires to depart as a member of the crew of a vessel or aircraft other than the one on which he arrived, may, within the period for which permitted to land, apply in person to an immigration officer to have his landing changed to that authorized under section 252 (a) (2) of the Immigration and Nationality Act.

8 C. F. R. 252.41:

Change in period of landing; procedure by immigration officer. If the immigration officer to whom an alien crewman applies for change of his landing is satisfied that the alien will depart as a member of the crew of a vessel or aircraft other than the one on which he arrived, he may, in his discretion, grant the alien crewman's request and permit him to remain in the

United States for such period as the immigration officer shall determine, not to exceed twenty-nine days from the date of the crewman's arrival in the United States. The immigration officer shall endorse the Form I-95A issued to the crewman as his conditional permit to land at the time of arrival to show the date to which the crewman has been granted permission to land, sign his name thereto, and return the form to the crewman as his conditional permit to land.

APPENDIX B

United States District Court, District of Connecticut

No. 9407 Criminal

UNITED STATES OF AMERICA

v.

HIGINO DE OLIVEIRA TAVARES

Memorandum of Decision

The defendant, an alien crewman, entered the United States at Newport News, Virginia, July 14, 1955, on a conditional permit to land pursuant to Sec. 1282 (a) (1) of Title 8 U. S. C. The defendant's ship sailed foreign on July 23, 1955, but the defendant knowingly and willfully remained in the United States. He came to the District of Connecticut 32 days after entry. All of the above facts were stipulated in this action based on an information charging the defendant with violation of Sec. 1282 (c), which punishes as a misdemeanant any alien crewman who willfully remains in the United States in excess of the number of days allowed in any conditional permit.

The sole question before this court is whether this action was properly brought in this district. Art. III, Sec. 2, Par. 3, and Amendment VI of the United States Constitution, Sec. 1329 of Title 8, U. S. C. and Rule 18 of the Federal Rules of Criminal Procedure require that a trial be held in the district in which the violation took place. The exception to this rule is when the commission of the alleged offense took place in more than one district, 18 U. S. C. Sec. 3237, as in cases "where a crime consists of distinct parts

which have different localities * * * or where it may be said there is a continuously moving act commencing with the offender and hence ultimately consummated through him * * * or where there is a confederation in purpose between two or more persons, its execution being by acts elsewhere * * *." *U. S.* v. *Lombardo,* 241 U. S. 73, 77.

Such does not appear to be the case here. The defendant violated Sec. 1282 (c) when he remained in this country after the expiration of his conditional permit, i. e. when his ship sailed. No further act by him or anyone else was required to complete the violation. While it is true that the illegality of defendant's presence in this country is continuous, *U. S.* v. *Anastasio* (D. N. J. 1954), 120 F. Supp. 435, rev. on other grounds 226 F. 2d 912, cert. den. 351 U. S. 931, criminal violations of the immigration acts regulating the entry of aliens have not been regarded as continuous crimes. Cf. *Lazarescu* v. *U. S.* (4 Cir. 1952), 199 F. 2d 898; *U. S.* v. *Vasilatos* (E. D. Pa. 1953) 112 F. Supp. 111, aff. 209 F. 2d 195 (fraudulently procuring entry into this country after prior deportation); *U. S.* v. *Capella* (N. D. Cal. 1909), 169 Fed. 890 (introducing into country a minor unaccompanied by his parents); *U. S.* v. *Lair* (D. Kan. 1910), 177 Fed. 789, rev. on other grounds 195 Fed. 47, cert. den. 229 U. S. 609; *U. S.* v. *Lavoie* (W. D. Wash. 1910), 182 Fed. 943 (importation of female for immoral purposes). This rule is apparently recognized in Sec. 1329 of Title 8 wherein the venue for all crimes under this subchapter is placed at the district of violation with the exception of crimes of fraudulent entry and entry after deportation, which may be tried in the district of apprehension. Such a distinction would be meaningless if violations such as the one in issue were regarded as continuous.

The information against the defendant is dismissed as brought in the improper district.

Dated at New Haven, Connecticut, this 6th day of May 1957.

J. JOSEPH SMITH,
United States District Judge.

U. S. GOVERNMENT PRINTING OFFICE: 1958